

## South Carolina's Compendium

### Imagine

Everyday, throughout every state, hundreds of government procurement professionals must laboriously construct solicitations. Some of their work involves a complex exercise of business judgment, such as deciding which source selection method is most likely to produce the best results for this item in this market place for this agency. Or, how will my pricing be affected if I choose a two year initial term with three one year renewals instead of a five fixed year contract? Not to mention the time involved to draft specifications and customize contract clauses for the unique aspects of a particular product or service. Unfortunately, such complex work is often supplanted by the relatively routine work of building solicitation forms. For example, taking the standard office IFB form and customizing it for a statewide multi-term fixed price multiple award commodities contract.

Imagine if that process could be efficiently automated ----- and then keep going.

Imagine that every commonly used clause, instruction, and form used for building solicitations by state government was well drafted, internally integrated and consistent, and had been researched and reviewed by both experienced legal and procurement staff.

Imagine that the buyers at every agency in your state were using the same set of clauses, instructions, and forms for building solicitations.

Imagine that you could make real time changes to any aspect of those materials based on a new statute, court decision, or policy change.

Imagine computer automation that, using this single set of standardized material, could correctly generate hundreds (720 to be exact) of different solicitation forms based on pre-determined decision points, such as single agency vs. state wide contract, short term vs. multi-term, IFB vs. RFP, goods vs. services, complex vs. simple contracts, etc.

Imagine the benefits to efficiency, knowledge transfer, and quality control.

We have, and we're there. We want to show everyone else how easy it can be.

### In a Nutshell

Informally dubbed "the Compendium," South Carolina's innovation is a publication called *Uniform State Provisions & Clauses*, which we used as a process template for automating the creation of solicitation documents.<sup>1</sup> In a nutshell, the Compendium is:

- A comprehensive collection of integrated, standardized, and carefully drafted clauses, bidding instructions, contract clauses, and solicitation related forms;
- A collection of guidance on how to use this material;
- A process for maintaining and updating in real time, and throughout all the state's purchasing offices, a single standardized version of one provision for each topic;
- A process for using computers to easily group and combine those clauses in order to build over 720 different solicitation documents, while meeting the needs of every source selection method for any commodity or service.<sup>2</sup>

The benefits include (1) reducing transaction costs for both vendors and the government, (2) reducing cost of goods and services, (3) increasing the speed of processing procurements from requisition to solicitation publication, (4) maintaining institutional knowledge and facilitating the transfer of that knowledge, and (5) maintaining quality control across state government, over time, and from solicitation to solicitation.

These benefits are achieved by consistently using clauses (including instructions, forms, and structure) that are standardized, well drafted, balanced, up-to-date, and integrated for all solicitations, regardless of using agency, purchasing agency, source selection method, or subject matter. These benefits are also achieved because the organizational structure of these clauses allows the entire process to be computer automated in an easy to use manner.

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<sup>1</sup> The full text of the Compendium, as well as screen shots showing how we computer-automated solicitation building, can be viewed at <http://www.ogs.state.sc.us/DDP/terms/>

<sup>2</sup> The Compendium does not encompass construction. Currently, the Compendium does not generate documents needed for those solicitations used in procurements conducted below the small purchase threshold.

## **The Innovation (and How We Did It)**

Four steps. *Step one* – We gave our lawyer a collection of all the bidding instructions we routinely used for any type procurement. He researched and revised them over a few years. Then, we hammered him relentlessly over every word. In August 2004 we issued the results – our General Bidding Instructions, which included (1) a standard organizational format that we call the Uniform Solicitation Format, (2) a revised cover page, and (3) a standardized set of bidding instructions – all appropriate for use in all procurements regardless of who was buying what, or how. *Step two* – We started on the rest: the contract clauses, instructions specific to a particular commodity, service, or source selection method, and every other clause or provision routinely used in any type of procurements. We started with over three hundred pages of unorganized clauses and forms residing in our automated procurement system. We developed a structure, weeded out duplication, merged or divided individual clauses, and redrafted or reviewed every single sentence in every single clause. After that, we re-reviewed all of them to make sure they were integrated with each other and developed instructions on how and when to use them. Lastly, we organized all the clauses. First, we gave every clause a unique name, with a month and a date to identify the version in time (just like the Feds). Second, we organized them according to the Uniform Solicitation Format so that every clause fell into only one place. The idea: anytime you need to find a clause, you should be able to find it in the same place in any solicitation – regardless of who issued it, or when. Third, we organized these clauses into nine categories of groups. We created one or more groups of clauses for each of the following categories: (1) standard procurements vs. those conducted only electronically, (2) supply, service, or both, (3) five source selection methods, e.g., IFB and RFP, (4) large / complex v. small / simple, (5) multi-term or not, (6) indefinite delivery or not, (7) single agency, multiple agency, or state-wide, (8) substantial services on state property – or not, and (9) offer and award by item, lot, or both. *Step three* – Using these groupings, we built a decision tree – similar to the type of flow-chart analysis a computer programmer might use. The branches on the decision tree corresponded to our categories of clause groups. The branches on the decision tree determined which groups of clauses would be used in a solicitation depending on a question the procurement officer must answer for each branch. For example, the buyer can select one of five different source selection methods. If he chooses competitive sealed bidding (IFB), a group of clauses specific to IFBs is included. In building any solicitation, he makes similar choices for each of the nine categories listed above. *Step four* – We wiped clean the clause database of our existing automated procurement system and added the Compendium's contents. Then, we developed a "Wizard" to automate the inclusion of clause groups, based on choices made by the buyer. After making nine selections, the computer – in a matter of moments – takes all the clauses from all the selected groups and uses them, and our standard forms, to build a solicitation document organized according to the Uniform Solicitation Format. That is our innovation. (For further explanation, see Pages 1-12 and Appendix "L" of the Compendium.)

## **The Potential for Transferability**

The Compendium (and probably the automation) is highly transferable to other jurisdictions for two reasons. First, the content was – to the extent possible – drafted for a national vendor pool operating under Model Procurement Code rules. Second, much of the Compendium's usefulness does not depend on the actual content of the clauses – a matter than can be very jurisdiction specific. Rather, much of the benefit stems solely from its organizational structure.

Starting with the content, every state has different laws regarding contracts and government procurement. Nevertheless, many basic concepts are similar throughout the country. The common law of contracts (with some exceptions) shares many similarities throughout the country. Every state but one has adopted some version of the Uniform Commercial Code. Even on procurement laws, variations of the Model Procurement Code have been adopted in many states and hundreds of local public procurement units. The Compendium was drafted to capitalize on this fact – not for the benefit of transferability, but to capitalize on the benefits of such uniform rules and to appeal to a nationwide vendor pool. Accordingly, much of the content is modeled after language in the Uniform Commercial Code, the Model Procurement Code's recommended contract provisions, or decades-old provisions from the Federal Acquisition Regulations. Many of these provisions would be equally effective in almost any state. Examples include clauses on minimum qualifications, default, set-off, third party beneficiaries, assignment, equal opportunity, termination for convenience, changes, and insurance.

The Compendium is also highly transferable because, even without contents, it memorializes a process that would benefit any sizable procurement office. At first blush, one might think that drafting was the single most time consuming aspect of the project. To the contrary. While very demanding, the bulk of the project was organizing a massive amount of existing data (hundreds of pages of clauses), culling the wheat from the chaff, breaking it down into useable, individual clauses, organizing related groups of such clauses, and then developing a systematic process – embodied in our decision tree – that determines when individual clauses or groups of clauses should be included in any given solicitation. That work is done, and any sizable procurement office could benefit from taking this structure and using it to organize, and to improve the automated use of, its own standard clauses and provisions.

## **Originality**

Much of the compendium isn't original at all. For years, the federal government has had a uniform structure for organizing solicitations. Many states have some level of standardization in their solicitation clauses. We've been using computers for years to build our documents. So what is unique? The structure. We are unaware of anything like the organizational structure, i.e., the organization of clauses into groups, the organization of those groups into categories, and the development of a decision tree which lets procurement officers use those categories to efficiently build over 720 different solicitation forms – all of which allowed us to automate the process with computers.

## **Service Improvements, Cost Reductions, and Other Financial Benefits**

Adoption of the Compendium has the potential to substantially improve service and reduce costs, both for vendors and the government – even if such benefits defy mathematical quantification. How? Uniformity in content and organization – across all buyers, all public procurement units, all source selection methods, and all commodities and services. That uniformity allows greater efficiency and less risk in a variety of ways.

Prior to the Compendium, most forms, instructions, and clauses were cobbled together by procurement staff from source material gathered along the way. No comprehensive review had ever been conducted. No structured process existed for maintaining a single standardized version of each clause on each topic – throughout state government. Every procurement shop (and sometimes individual buyers) had a different clause or variation of a clause addressing risk of loss, delivery, minimum vendor qualifications, and insurance – to name just a few. Prior to the Compendium, the stakeholders – the procuring agency, using agency, and vendors – had to read every clause in every solicitation. A stakeholder looking for a particular clause had to hunt and sift through an entire solicitation to see if it was there. Variations among the "seemingly" standard clauses created inconsistencies among other provisions in the same document. A vendor doing business with both corrections and social services had to learn at least three different sets of clauses – one each for corrections, social services, and central state purchasing (for when the procurement was over agency authority). A procurement officer, upon moving from one agency to another, had to learn a new solicitation form and a new set of clauses. Statewide training on contract clauses was impossible. All that has changed now. To put it simply – we're all reading off the same sheet of music!

Additional efficiency arises because the Compendium allows greater automation of the solicitation creation process. Now, rather than spend precious time modifying one of several standard solicitation forms to meet a wide variety of different needs, buyers can – with a few strokes on the keyboard – generate a fully tailored solicitation document (up to 720 different combinations). With the time saved, buyers can focus more effort on perfecting specifications and clauses unique to their procurement.

## **Using Agency Involvement**

Using agencies have had significant involvement in implementation. Central state purchasing went live with the General Bidding Instructions in August 2004 and with the Compendium in February 2006. The using agencies have responded enthusiastically. We've seen strong participation in six days of training around the state. Virtually every agency has voluntarily adopted the forms and clauses almost verbatim. Several agencies are asking that we develop an exportable module of our computer automated procurement system so that every agency can build their solicitations using the same database of clauses, instructions, and forms. We are in the planning stages of complying with their requests.